

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JLING INC.
d/b/a Showa Hibachi, et al.,

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE STEVEN I. LOCKE
UNITED STATES DISTRICT JUDGE

For the Plaintiff: TROY LAW PLLC
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Flushing, New York 11355
BY: JOHN TROY, ESQ.

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1 (Call to Order of the Court.)

2 MR. TROY: John Troy for the plaintiffs.

3 MR. BROWN: William Brown for the defendants.

4 At my table are Jiang Hang, Philip Kim, Jia Ling
5 Hu, Jia Wang Hu, and John E Hu.

6 THE COURT: Good morning. Please be seated.

7 Let's take the issues in reverse order.

8 When we left yesterday, we had a conversation
9 about whether Mr. Ji could be permitted to testify from
10 his home in mainland China.

11 I received a letter from Mr. Troy, docket entry
12 80, either last night or this morning.

13 Did you recall seeing that letter, Mr. Brown?

14 MR. HANG: Your Honor, this is Jian Hang.

15 I read the letter this morning from the Pacer.
16 I saw the letter. But, your Honor, can I explain the law
17 and our position?

18 THE COURT: Yes. But you have to explain to me
19 how you know what the law is, because under the ruling you
20 have to establish it.

21 MR. HANG: Yes.

22 Your Honor, I prepared a translation of Civil
23 Procedure Law of the People's Republic of China yesterday,
24 it was prepared by Rui Ma, who is fluent in English and in
25 Chinese.

1 THE COURT: And did you give a copy of it to Mr.
2 Troy?

3 MR. HANG: I don't have a chance to do that.

4 THE COURT: Why don't you let him look at it.
5 Mr. Troy, take a look at it.

6 And I will let you continue.

7 If you want a copy, Mr. Troy, we can make one
8 for you.

9 While that is being done, let's turn down the
10 sound on the computer.

11 Mr. Troy, we will make you one.

12 MR. TROY: Yes. Please.

13 MR. HANG: Excuse me. Can you make two copies?
14 Thank you.

15 (There was a pause in the proceedings.)

16 THE COURT: You have a copy now.

17 Mr. Hang, who is Rui Ma?

18 MR. HANG: Rui Ma is attorney from my office who
19 studied in China in law school and then who come to the
20 US, started practice, pass New York bar, and now he's an
21 attorney.

22 THE COURT: Is it Mr. Ma or Ms. Ma?

23 MR. HANG: Mr. Ma.

24 THE COURT: Mr. Ma is an attorney admitted to
25 practice in New York?

1 MR. HANG: Yes.

2 THE COURT: Is Mr. Ma also an attorney admitted
3 to practice in China?

4 MR. HANG: No.

5 But, your Honor, I am attorney practiced in
6 China.

7 THE COURT: Are you admitted to the bar here?

8 MR. HANG: Yes.

9 I was admitted to the bar in China from 1998
10 until last year, because last year I got my citizenship.
11 According to China law, the people who is not Chinese
12 citizen cannot practice law in China.

13 THE COURT: So you gave up your citizenship.

14 MR. HANG: I gave up my citizenship.

15 Actually, your Honor, it's your job, if you
16 remember it.

17 I consider my attorney license shall be
18 terminated from, I should say, December 13, 2017, I got my
19 citizenship. But I have been licensed in China, from
20 1998, I should say for 20 years. I also practiced in
21 Beijing in litigation. I even had a case in the Supreme
22 Court of China.

23 THE COURT: Okay.

24 MR. HANG: So I'm quite familiar with civil
25 procedure laws of China.

1 THE COURT: You are familiar with it from your
2 practice in China?

3 MR. HANG: Yes.

4 THE COURT: So please continue.

5 MR. HANG: So it is a translation from the
6 Chinese into English. We also take the Article 277 which
7 is related to today's case.

8 THE COURT: Okay.

9 MR. HANG: I can read English translation.

10 THE COURT: Why don't you do that, please;
11 slowly for the court reporter.

12 MR. HANG: Yes.

13 Article 277 of the Civil Procedure Law of the
14 People's Republic of China, 2017 revision effective. The
15 article says:

16 *"When requesting or providing coordination in*
17 *transnational legal proceeding, litigants shall do it in*
18 *conformity with the international treaty entered into by*
19 *the People's Republic of China, or through diplomatic*
20 *approach in absence of a treaty. The embassy and*
21 *consulate of a foreign country are permitted to serve*
22 *processes, conduct investigations, and to obtain evidence*
23 *from its own nationals, but shall not violate the law of*
24 *People's Republic of China or a compulsory measure.*

25 *"Except for what is described in the forgoing*

1 *provisions, no foreign authority or individual is allowed*
2 *to serve process, conduct investigation, or obtain*
3 *evidence within the borders of People's Republic of China*
4 *without permission from the authority of the People's*
5 *Republic of China."*

6 So basically the third paragraph says without
7 getting the authority or permission from People's Republic
8 of China, a foreign power, for example, or individual,
9 like the court or attorneys, for attorneys, like US
10 attorneys or foreign individuals and common people cannot
11 conduct proceedings which is part of evidence within the
12 border of the People's Republic of China.

13 That means if the people or witness sitting in
14 the border of the People's Republic of China, the foreign
15 authority or foreign individual cannot take deposition
16 from them or take testimony from them because they are in
17 China, they are China nationals; the legal authority of
18 China; you cannot violate that legal authority. If you
19 violate that law, the penalties could be arrest or
20 detention of attorneys or individuals or participants,
21 including the witness sitting here. He could be arrested
22 or penalty for violation because --

23 THE COURT: Mr. Hang, those same penalties could
24 apply to attorneys, as well, involved in obtaining the
25 evidence?

1 MR. HANG: Yes. By the attorney and also the
2 witness.

3 THE COURT: You have provided the Civil
4 Procedure Law copy here. Do you have a copy of whatever
5 expansion of the law that talks about penalties?

6 MR. HANG: I don't have time to. But I don't
7 have copies, no.

8 THE COURT: Is that something you can obtain?

9 MR. HANG: Probably penalties I can obtain.
10 However, I have two articles which is written by
11 US attorney. One of the, I know it is not authority but
12 the US attorney article. Another is by, it is called
13 International Deposition Agency. They mention this. Both
14 of them mention --

15 THE COURT: Do they mention penalties, in those
16 articles?

17 MR. HANG: They might talk about it. I can read
18 what it says.

19 It says: *"Beyond being merely frowned upon,*
20 *participation in unauthorized depositions"* --

21 THE COURT: Hold on. Why don't you give those
22 to us and we will make copies for you and for Mr. Troy so
23 he can follow, and then we will talk about it.

24 (There was a pause in the proceedings.)

25 THE COURT: Mr. Hang, these two articles talk

1 about a deposition being taken in China, don't they? This
2 is not what we are doing here.

3 MR. HANG: Your Honor, I think it's related
4 article that says no depositions in China. No.

5 THE COURT: But we are not taking a deposition.
6 We are trying to obtain evidence for a trial. The rule
7 speaks to this but I don't know whether the rule speaks
8 only about depositions.

9 You do not have to prove to me you cannot take a
10 deposition in China. I tried it for years and was unable
11 to do it, so I know you can't.

12 We're talking about obtaining evidence for a
13 trial here. Do these articles speak to that?

14 MR. HANG: Your Honor, the Chinese law, Article
15 277, is that obtains evidence within the border of China.

16 THE COURT: I know that. We have read that.
17 That is what you already read to me.

18 MR. HANG: Yes.

19 THE COURT: I'm only interested in articles
20 about obtaining evidence; not at depositions, evidence at
21 trial.

22 And I'm interested in the penalties that you
23 discussed before. Is that something that you can have in
24 court later today or tomorrow?

25 MR. HANG: I believe I can. Yes.

1 THE COURT: Okay.

2 Mr. Troy, please respond to any or all of this.

3 MR. TROY: Yes.

4 THE COURT: What is your response to this?

5 Article 277 of the Chinese Civil Procedure Law,
6 which has been submitted to me, seems to prohibit what is
7 being attempted here. And I'm told, and I have no reason
8 to doubt Mr. Hang at this point, that the penalties for
9 violation of Article 277 can be severe.

10 MR. TROY: Your Honor, each country, they have
11 their own law, and you know, each depends the role how it
12 apply. The United States? We do through our judicial
13 system. And the law says, the law says only we did the
14 border of China.

15 We believe, one, when the officer of the
16 ministering the oath, he or she is in the court of United
17 States, he or she can operate from China.

18 So I believe the concern of sovereignty of China
19 is they don't like foreign individuals in China to invade
20 their sovereignty. That is why they have these kind of
21 law. But different direction of, one, if you read the
22 Article 277, the paragraph two, the paragraph second, it's
23 talking about even taking the composite measure.

24 I don't think we have, we took any composite
25 measure. Usually, that's talking about the reason why

1 they don't do the records, because they want to protect
2 the defendants of their citizens.

3 But in this case we are the plaintiff. That's
4 the one when you file a case he got me to adhere to the
5 jurisdiction of the United States Code, and he's there and
6 he's cooperating to have the arrangement of US court and
7 US court to have its jurisdiction to rule according to the
8 civil procedure of United States. We respectfully cite
9 the MRPD, Article 43.

10 And especially when the international
11 interaction is possible, I believe each country, they got
12 to respect each country's judicial jurisdiction if it is
13 happen within their territory.

14 So we don't think, when they took these civil
15 procedure, they really consider like today we do, one, we
16 are doing a deposition; second one, we are doing a trial
17 according to the jurisdiction plaintiff submitted to
18 himself to it.

19 So I believe this code can, you know, the Judge
20 ruled the other day we can permit it to do the testimony
21 by the contemporaneous transmission.

22 THE COURT: That was assuming the
23 contemporaneous transmission was lawful. This issue was
24 not teed up as part of that motion.

25 This could have been a different situation if he

1 was in the jurisdiction where this was not an issue, like
2 Hong Kong.

3 Is that right, Mr. Brown?

4 MR. BROWN: That's correct.

5 THE COURT: I did not mean to cut you off,
6 Mr. Troy. Please continue.

7 MR. TROY: Your Honor, regarding the Hong Kong.
8 I believe Hong Kong is part of China right now after 1997.

9 THE COURT: But it has its own civil procedure
10 law.

11 MR. TROY: Your Honor, civil procedure law is
12 prevailing in all of China. It's not like the United
13 States. We have --

14 THE COURT: Do you have any law or authority for
15 that proposition in front of you that you can give me?

16 MR. TROY: Your Honor, I'm not expert on Chinese
17 law.

18 THE COURT: Are you an admitted attorney in
19 China?

20 MR. TROY: No. Your Honor, I come from Taiwan.
21 We are our own legal system.

22 THE COURT: Are you admitted in Taiwan?

23 MR. TROY: No, your Honor.

24 THE COURT: Just here.

25 MR. TROY: Yes.

1 THE COURT: Okay.

2 MR. TROY: Your Honor, by the way, you know, we
3 try to provide Mr. Li go through China to Taiwan. The
4 reason why he was not is because he need a visa to go to
5 Taiwan. So we think, you know, what I say is a different.

6 THE COURT: I understand.

7 MR. TROY: Yes. So we think and I believe that
8 a Chinese citizen if the United States and when he do the
9 notarization or he do the divorce case in civil court, you
10 think whoever notarize his either ministering his oath is
11 going to violate the Chinese law?

12 Even if it is, I don't think United States
13 judicial or maybe United States legal system and organized
14 laws kind of law because that's our territory. How can
15 the judicial system should be limited under the sovereign,
16 should be limited to the party that we read about, I
17 believe our papers said clearly it's only limited to one
18 process, one, if you're an attorney in China and if you
19 are administering an oath or if you are consulate. You
20 are consulate, you, too, are authorized. If you are
21 consulate, of course you can minister an oath in American
22 Embassy because that's things within the territory of
23 United States.

24 THE COURT: Okay.

25 MR. TROY: Your Honor, that is my point.

1 THE COURT: Is there anything else?

2 MR. TROY: No.

3 THE COURT: Mr. Hang, do you want to respond?

4 MR. HANG: Yes, your Honor.

5 Basically, Mr. Troy mentioned two things. One
6 thing he said, because the people who do the deposition
7 are attorney who are outside the territory of China.

8 THE COURT: Would you say that again?

9 MR. HANG: Because the people who are the
10 individuals, if the court is outside the China, then it is
11 allowable to eliminate the oath or conduct a trial there
12 in China. It is not right.

13 As attorney, I was attorney in China. The law
14 clearly says you cannot conduct investigation or evidence
15 within the border of the People's Republic of China
16 because the witness is in China so the evidence is from
17 China. Every information coming within the border of
18 China.

19 So that's the law. You cannot do that even by
20 today's technology. You can do in US. You can do it in
21 Hong Kong. And you can do it in Taiwan. But if the
22 witness in China, they have to come from China, so if you
23 understand the law, that's what the law says. As long as
24 the witness in China, you cannot do that. You can move
25 the witness to Hong Kong. And also move to Taiwan, as the

1 plaintiff counsel tried to do. You can move the people to
2 Taiwan, then you can do that. However, he failed.
3 Actually, the proper place is Hong Kong. So everything in
4 Hong Kong to do the case. The first point.

5 The second point. Mr. Troy mentioned the second
6 paragraph of this Article 277. That paragraph only
7 applies to United States citizens because inside the
8 embassy and consulate of a foreign country are permitted
9 to serve process and can obtain evidence from its own
10 nationals.

11 The witness is not US citizen. Is Chinese
12 citizen.

13 The civil procedure code of China is only
14 applicable throughout mainland China not in Hong Kong.
15 Hong Kong is British legal system, the common law. But
16 Hong Kong civil procedure is different from the civil
17 procedure in China. China is civil offensive. As a
18 Chinese lawyer, I know that. So Chinese civil procedure
19 law does not apply to Hong Kong.

20 THE COURT: Mr. Hang, do you have to be admitted
21 to Hong Kong separately from being admitted to the bar in
22 China?

23 MR. HANG: No. It is totally different thing.

24 THE COURT: So to practice in both
25 jurisdictions, you have to be admitted separately into

1 each.

2 MR. HANG: That is right, your Honor. Yes.

3 They are treated like two different countries.

4 Hong Kong has its own legal system. Hong Kong
5 has common laws. Hong Kong has case law.

6 THE COURT: Derived from the English.

7 MR. HANG: Yes.

8 China has different law. The Chinese law can
9 never apply to Hong Kong unless the Hong Kong constitution
10 is made in China. Otherwise, Hong Kong civil law, civil
11 procedure law, criminal law, Hong Kong has its own system.

12 Chinese attorneys cannot practice the law in
13 Hong Kong. Hong Kong attorneys cannot practice law in
14 China if they are not admitted in both places.

15 THE COURT: Okay.

16 MR. HANG: Thank you.

17 THE COURT: Is there anything else you want to
18 respond to in reply, Mr. Troy?

19 MR. TROY: No, your Honor. I believe Mr. James
20 Hang, he has no experience to deal with international --

21 THE COURT: He is the only lawyer in this room
22 who has practiced in China. How can he have no
23 experience?

24 MR. TROY: Your Honor, practicing locally in New
25 York is totally different.

1 THE COURT: But he practiced in China, though,
2 didn't he?

3 MR. TROY: Your Honor, I don't think he has ever
4 experienced any dealings with DOE foreign when he was
5 practicing in China. That's one.

6 Second one. Before 1993, I agree. 1997, I
7 agree, Hong Kong has different system. But after she
8 returned to the China, everything is changed.

9 THE COURT: What basis are you making that
10 statement on?

11 You said everything's changed. First of all, we
12 are not interested in everything; we are interested in the
13 practice of law.

14 Tell me the basis for your knowledge of the
15 legal system in Hong Kong as opposed to China. What are
16 you basing that statement on?

17 MR. TROY: Your Honor, in 1997 --

18 THE COURT: I understand that Hong Kong reverted
19 back to the Chinese government in 1997 or '99; I don't
20 recall which. Okay, it seems to be universal that it was
21 1997.

22 That's fine. But it doesn't necessarily mean
23 that the legal system changed into the Chinese legal
24 system. There were all sorts of agreements and
25 discussions leading up to that moment in history.

1 I can tell you, from my personal experience of
2 trying to litigate in both China and Hong Kong, I was able
3 to obtain evidence in Hong Kong. The Chinese government
4 told me to go fly a kite, and I was barred and didn't go.

5 That doesn't necessarily carry over to today but
6 it certainly is more consistent with what Mr. Hang is
7 saying than with what you are saying.

8 So far the only authority you have shown me --
9 well, actually you haven't cited any authority in your
10 letter except to sort of parse words that suggest that
11 because these proceedings are here, it doesn't matter
12 where Mr. Ji is sitting when he gives testimony.

13 All right. Please continue with your statement,
14 with your reply to Mr. Hang.

15 MR. TROY: And your Honor, Mr. Ji has been the
16 plaintiff within the jurisdiction of the United States
17 District Court. And the reason why we talking about this
18 one has to be permitted to do the video, the reason why,
19 one, whoever the administrator officer is within the
20 United States.

21 THE COURT: Mr. Troy, I understand your
22 position. I don't want to do this all day long. We are
23 on trial.

24 I'm asking, do you have any reply specifically
25 to what Mr. Hang said?

1 MR. TROY: No, your Honor.

2 THE COURT: Okay. Here is what we are going to
3 do.

4 First, I am ordering Mr. Hang to produce that
5 section about penalties that relates to a violation of
6 this. The only authority I have before me is 277 of the
7 Civil Procedure Law of the People's Republic of China, the
8 revision dated 2017, effective today and translated from
9 the Chinese into English; as well as Mr. Hang is the only
10 attorney or person in this courtroom who has practiced law
11 in China, and I believe he practiced for 20 years.

12 My reading of the statute is that conducting the
13 proceedings in this present form is a violation of Chinese
14 law, which exposes not only the plaintiff to legal
15 sanctions -- and I would submit that is up to him -- but
16 also defense counsel, who I am told conducts business in
17 China regularly. Therefore, I am not going to permit
18 Mr. Ji to testify in this matter.

19 Is there any other relief you seek, Mr. Brown,
20 with regard to this testimony?

21 MR. BROWN: Can we reserve that to a submission
22 at another point?

23 THE COURT: We will have posthearing briefs on
24 each issue, not just on this.

25 But Mr. Ji is not going to be permitted to

1 provide further testimony in this case in this manner.

2 Do you have any objection to him listening?

3 MR. BROWN: I have no objection to him
4 listening.

5 THE COURT: So if he wants to sit and watch the
6 rest of the case, that is fine with you. There will be no
7 more testimony from him.

8 That is the ruling. I will put it in writing
9 later so that, at the end of this case if either of you
10 wants to appeal, you will have something more reasoned and
11 ready.

12 MR. BROWN: Your Honor, just to clarify. The
13 testimony that was already taken, that is not going to be
14 included in the record?

15 THE COURT: It depends on when you make your
16 motion. You haven't made one yet.

17 MR. BROWN: So we would move that the testimony
18 that has already been taken be stricken from the record.

19 THE COURT: Understood.

20 Mr. Troy, do you want to respond to that? Other
21 than what you have already said on the record.

22 MR. TROY: Your Honor, we are opposed this
23 motion.

24 THE COURT: Okay. On what grounds? The motion
25 is being made based on the same arguments as before.

1 Your opposition is the same based on the same
2 arguments as before? Or do you have something to add?

3 MR. TROY: Your Honor, maybe the same. Maybe we
4 can add.

5 THE COURT: Here is what we are going to do,
6 then.

7 Your motion is granted, for the reasons I have
8 just explained. The testimony of Mr. Ji is stricken as
9 being violative of Chinese law as explained to me on the
10 record by Mr. Hang, again the only attorney in the room
11 who has practiced law in China, for 20 years. I accept
12 his representation with respect to the law.

13 If in the posttrial briefing this argument
14 should be raised, and, Mr. Troy, you come up with other
15 arguments, I will consider reopening or reviving that
16 testimony, as appropriate. But as it stands now, we are
17 not going to take any more testimony from Mr. Ji, and his
18 testimony is stricken.

19 Everybody's rights are reserved until we have a
20 written decision in this case. In other words,
21 everybody's time to appeal is not ticking yet. I don't
22 want time to become an issue.

23 Is there anything else we need to discuss before
24 we get to the continued cross-examination of Mr. Li?

25 MR. BROWN: Nothing from the defendant.

1 MR. TROY: Nothing further.

2 THE COURT: We are going to take a minute to
3 make sure Mr. Ji is back on the line.

4 Mr. Troy, do you need a minute to communicate
5 with Mr. Ji outside of our presence, about the ruling?

6 MR. TROY: Yes.

7 THE COURT: If you want to make a phone call or
8 something to him, you should step out and do that.

9 Mr. Troy, we are going to take ten minutes so
10 that you can step outside and call Mr. Ji and talk to him.

11 MR. TROY: Okay.

12 THE COURT: We will take 10 minutes.

13 (Recess taken at 10:30 a.m.)

14 THE COURT: Mr. Brown, whatever Mr. Hang is
15 going to submit, I would like it in the form of an
16 affidavit with both civil procedure law and whatever the
17 penalties provision is, and an explanation from him of the
18 law, just what it is; and serve it on Mr. Troy so that he
19 will have it all laid out so that if there is a response,
20 we will have it all in due course.

21 MR. BROWN: Yes, your Honor.

22 THE COURT: Very good.

23 MR. TROY: Regarding this issue, can we make our
24 available within one week and then we can revisit, so that
25 he can arrive in Hong Kong?

1 THE COURT: No. He is supposed to be available
2 now, on the date of trial.

3 This is like renewing your motion to adjourn the
4 trial after your associate made a representation that if I
5 let him out of the case there would be no adjournment of
6 the trial and we would move along.

7 The trial is now and he should have been there
8 in advance.

9 We can talk about that more at the end. Let's
10 get Mr. Li's testimony completed.

11 I remind Mr. Li that he is still testifying
12 under oath.

13 Would you please tell Mr. Lee that he is still
14 under oath.

15 (Interpreter and witness confer.)

16 THE COURT: He understands he is still under
17 oath. Is that correct?

18 (Interpreter and witness confer.)

19 THE COURT: We are going to administer the oath
20 again because the witness looks a little confused.

21 Please stand.

22

23 **DECHENG LI**

24 called by the Plaintiff, having been first duly
25 sworn/affirmed, was examined and testified,

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1 through an interpreter, as follows:

2

3 CROSS-EXAMINATION

4 BY MR. BROWN:

5 Q. Who does the employees' schedules at Showa Hibachi?

6 A. Everything in the restaurant, it was the boss's wife
7 who arranged that.

8 Q. How were schedules set at the restaurant?

9 A. On Monday, Tuesday, Wednesday, Thursday, and Sunday,
10 it was from 12 o'clock to 10 o'clock.

11 On Friday and Saturday, it was from 12 to 11.

12 Q. How did you know which days you would be working?

13 A. It was all arranged by the boss's wife.

14 Q. Can you tell me how you were informed of what days
15 you would be working.

16 A. It was prearranged. There was no notification for
17 whatever date that I have to work.

18 Q. So would it be the same days off every week?

19 A. If nothing special, that would be the same.

20 Q. Did you ever take a day off for personal or medical
21 reasons while at Showa Hibachi?

22 A. Yes.

23 Q. And who did you speak to to request a day off?

24 A. I spoke to the boss's wife.

25 Q. What would the boss's wife do at the restaurant on a

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1 day-to-day basis?

2 A. The boss's wife would serve as the waitress, and also
3 at the bar, and then as the cashier, and also managing
4 everything at the restaurant.

5 Q. What about the bar? What would he do on a daily
6 basis?

7 A. Would you repeat that?

8 (Interpreter and witness confer.)

9 A. When the boss arrived, he would usually sit at the
10 bar to read newspaper.

11 BY MR. BROWN:

12 Q. Did he do anything else?

13 A. During the time we work, he did nothing. At
14 dinnertime, when we were busy, sometimes he would help us
15 to remove the dishes.

16 Q. Did he supervise the employees?

17 A. Yes.

18 Q. How often was the boss's wife at the restaurant?

19 A. Every day.

20 Q. And during the weekdays, Monday through Friday, what
21 hours was she generally at the restaurant?

22 A. Either on Monday or Tuesday, the couple will not show
23 up at the restaurant.

24 Q. What hours would she be there the rest of the week?

25 A. From the opening until the close.

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1 Q. So Wednesday, Thursday, and Friday, she would be
2 there for almost the entire day?

3 A. Yes.

4 Q. How often was the boss's son, Jia Ling Hu, at the
5 restaurant?

6 A. I believe one full day and two half days.

7 Q. When he was at the restaurant, what would he do?

8 A. He collected payment and answered phone calls and
9 sometimes he worked at the bar.

10 Q. Would you consider him a supervisor?

11 A. From the point of the employees, they are one family.
12 They are all our bosses.

13 Q. When I asked you that question during your
14 deposition, I said would you consider him a supervisor,
15 you answered no.

16 So what do you mean by it is the same family?

17 A. I never said that he was the boss. But from the
18 viewpoint of the employees, they are all in the same
19 family. They are all our bosses. But the boss's wife was
20 supervising.

21 Q. I'm confused by your response. You just said in the
22 beginning that you wouldn't consider him a boss but they
23 were all bosses.

24 Can you clarify?

25 A. I did not say that he was not a boss, but I said that

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1 they were one family.

2 From the employees' point of view, they are
3 father and mother and son, and all the same family.

4 From any restaurant, any employee, if they are
5 from the same family, we consider they are either the
6 older boss, the younger boss. They are all bosses.

7 Q. So besides happening to be from the same family, did
8 he do anything that would indicate that was your boss?

9 A. When the son arrived, he also arranged the job for
10 the wait staff and he also arranged the jobs.

11 Q. When I asked you at your deposition did you ever see
12 him tell employees what to do or to give instructions, you
13 answered no, on page 29 of the transcript.

14 So how is that not giving instructions, based on
15 what you just said?

16 A. He did not instruct me what to do because we knew
17 what to do on a regular basis, and that's the kitchen
18 cook.

19 Q. But you just said that when he arrived at the
20 restaurant, he started telling people what to do. How do
21 you reconcile that?

22 A. I did not say that he tells us what to do. He
23 trusted the wait staff to do things, but if we did not do
24 something properly, he would instruct us what to do.

25 Q. Then why, during your deposition when I asked the

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1 exact question, *Did you ever see him tell any employees*
2 *what to do or give instructions*, you answered no?

3 A. I said that he did not come to the restaurant very
4 often.

5 When he arrived together with his parents, and
6 if they were unfair, he would be; the boss's wife also
7 said that.

8 At the time when his parents were not at the
9 restaurant, from our point of view he was also the boss
10 and he would direct what we should do at the restaurant.

11 Q. I'm just confused why you are saying that now, when
12 during your deposition you said no, he wasn't a
13 supervisor, and no, he didn't give any instructions.

14 A. What I said is the fact.

15 I guarantee that all I said is the truth to the
16 court.

17 I'm willing to go through the test for whether I
18 was lying or not, together with the other parties, and if
19 I was lying, I'm going to receive whatever penalty the law
20 considers.

21 THE COURT: Before your next question,
22 Mr. Brown. I do not have a copy of the transcripts that
23 you are referring to, so I can't follow along.

24 Mr. Troy gave me the transcripts he intended to
25 use but I don't have any from the defense.

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1 MR. BROWN: It should have been included within
2 the binders we submitted.

3 THE COURT: I have the binders, but the binders
4 have no transcripts.

5 Wait! Hold on! I'm sorry. They came in
6 separate packages.

7 MR. BROWN: There were two binders.

8 THE COURT: I apologize. I do have it. I'm
9 sorry. I apologize.

10 MR. BROWN: This is all around page 28 and 29.

11 THE INTERPRETER: May I come close to the
12 witness?

13 THE COURT: Yes. Of course.

14 (Interpreter at witness stand.)

15 THE COURT: Please continue.

16 BY MR. BROWN:

17 Q. Would you consider the boss's son, that he was
18 treated like an employee, like yourself?

19 A. No.

20 Q. You said during your deposition that he had been
21 treated the same as we, as working for the boss.

22 And I asked: So he was considered like an
23 employee? And you said yes.

24 So what do you mean by that?

25 A. In the states, everybody has to work. Even though

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1 the person works, it doesn't mean that he is not the boss.

2 The boss also has to work.

3 Q. You said he was working for the bosses.

4 A. The boss also work. And I saw the business license.

5 It has, the son's name is written there.

6 Q. When you first started working at Shows Hibachi, what
7 was your pay?

8 A. After I arrived there, later on it was set at \$420
9 per week, and I worked four days a week.

10 Q. Was your pay based on a daily rate?

11 A. I received 420 per week for four days. If I worked
12 one day less, it will be deducted one day. If I worked
13 day extra, I would be paid one day extra.

14 Q. And how much extra or how much less would you be paid
15 if you worked one day less or one day more?

16 A. One day more, one day less, it would be paid four
17 days for 420. You could just divide it by four days.

18 Q. So would it be fair to say it was \$105 a day?

19 A. I was paid weekly, and based on the calculations,
20 that would be \$105.

21 Q. Did the rate at which you were paid ever change?

22 A. No. \$420 per week and four days.

23 Q. Did you ever work half days?

24 A. Excuse me?

25 Q. Did you ever work half days?

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1 A. No half day. Sometimes I worked three days.

2 Sometimes five days.

3 Q. You never worked a half day?

4 A. From my recollection, no. But it's been a long time.

5 But from my recollection, no.

6 Q. How often were you paid?

7 THE INTERPRETER: You mean how often did he get
8 paid?

9 MR. BROWN: Yes.

10 BY MR. BROWN:

11 Q. How often were you paid?

12 A. I requested once per week.

13 Q. Did you sign any papers when you received your pay?

14 A. I signed my name on a piece of paper.

15 Q. Do you recall what was written on the paper?

16 A. It stated how many days I worked and how much for the
17 wages.

18 Q. What happened after you signed the paper?

19 A. After I signed the piece of paper, sometimes it was
20 given back to the boss and sometimes I handed it over to
21 the boss's wife.

22 THE COURT: Which exhibit are you handing to the
23 witness?

24 MR. BROWN: This is D4.

25 BY MR. BROWN:

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1 Q. Mr. Li, there is a document in front of you. Looking
2 at the first page of this document, B00712.

3 Do you recognize this document?

4 A. Yes.

5 Q. What is this document?

6 A. This is the receipt of the wage I received.

7 Q. And is this your signature on the front of this?

8 A. Yes.

9 Q. And if you turn to page B00720, do you see, on the
10 right side of this page, there is some printed writing?

11 A. Right now I see that. Before, no.

12 Q. But now you see that there is printed writing on the
13 right-hand side?

14 A. Yes.

15 Q. Do you recognize what this is a copy of?

16 A. This is from the time punching card at the
17 restaurant.

18 Q. And if you see on the top of each of these slips next
19 to where it says waiter, there is a name Decheng Li.

20 Is that your name?

21 A. The name, yes.

22 Q. So based on this, do you believe that these are a
23 copy of your time clock records?

24 A. I would like to explain to the court about the card
25 punching issue.

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1 Q. But now it is just a question of whether you believe
2 these are a copy of your punch clock records.

3 A. That is what is shown on the document, but my actual
4 time punching was not the same.

5 MR. BROWN: Your Honor, I ask that exhibit D4 be
6 admitted into evidence.

7 THE COURT: Objection?

8 MR. TROY: No, your Honor.

9 THE COURT: No objection. D4 is admitted.

10 (Defense Exhibit D4 in evidence.)

11 BY MR. BROWN:

12 Q. Can you turn back to page B000712, please.

13 If you flip through the first page and the
14 second page, is this the punch clock records -- sorry, the
15 paper that you signed when you received your pay?

16 A. Yes.

17 Q. There any other papers that you signed when you
18 received your pay?

19 A. No.

20 Q. And did the amount that you received always match to
21 the number that was on these receipts?

22 A. Yes.

23 Q. If you turn to page B00715. Do you see on there it
24 says \$105?

25 A. Yes.

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1 Q. Do you know why you only received \$105 that week?

2 A. Just like I testified yesterday, that I believe I
3 worked only one day and then I did not continue.

4 Q. When you returned to the restaurant on August 7, '14,
5 what was your regular schedule?

6 A. That was four days a week, and \$420 per week for my
7 wage.

8 Q. Did you work the same days, usually?

9 A. At that time, because of my health condition
10 sometimes I worked three days. But I also worked four
11 days at the later half of last employment in 2015, and
12 sometimes I worked five days a week.

13 Q. When you first started, did you work the same days,
14 as in Monday, Tuesday, Wednesday?

15 A. Anyway, those are busiest days. Friday, Saturday,
16 and Sunday. I worked for those days.

17 Q. So Friday, Saturday, and Sunday. Any other days?

18 A. I believe it was consecutive days from Thursday also.

19 Q. Did you work the same hours each day?

20 A. Until the late half of 2015, that would be the case.

21 Q. And what were your hours?

22 A. For Thursday and Sunday, that would be from 12 to 10.
23 Friday and Saturday, that would be from 12 to 11.

24 Q. And then you said you started working five days a
25 week later on in your employment?

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1 A. Yes.

2 Q. When did you start working five days a week?

3 A. In about April or May of 2015, I worked five days a
4 week for about approximately four weeks.

5 Q. So it was fewer times that you worked five days a
6 week?

7 A. From my recollection, yes.

8 Q. The rest of your employment, you worked five days a
9 week?

10 A. Yes.

11 Q. You testified earlier there was a punch clock system
12 at the restaurant. How did that work?

13 A. Sometimes I started at 12 o'clock noon for myself and
14 after I arrived at the restaurant but I forgot to punch
15 the clock. And later on at about 2 o'clock, 3 o'clock,
16 even 4 o'clock, when I recalled that, I then punched the
17 card.

18 Sometimes I forgot and give the time I got off
19 from work so I would punch the card twice, one for
20 arrival, one for departure.

21 Q. Were you supposed to punch the clock in the middle of
22 the day?

23 A. We supposed to punch the card when we arrived and
24 also when we left.

25 And there was no card punching during the day

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1 because the restaurant did not close. No in the middle
2 punching cards.

3 (Continued on the following page.)
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1 CROSS-EXAMINATION (Cont'd.)

2 BY MR. BROWN:

3 Q. You just testified earlier that you sometimes punched
4 in around three, 4:00.

5 Why would you do that?

6 A. Sometimes when we arrive and customers were waiting,
7 so we had to hurry to serve the customers. And until
8 after we finished serving the customers, then we punched
9 the card.

10 Q. Where was the punch clock located?

11 A. At the cashier location.

12 Q. Was that inside the kitchen or outside the kitchen?

13 A. Outside.

14 Q. Was it close to the entrance of the restaurant?

15 A. We had to turn to the bar area.

16 Q. Did you punch on your way in and on your way out?

17 A. I was required to punch the card when I arrived and
18 when I leave.

19 Q. And what kind of system was it? What did it look
20 like, the punch clock?

21 A. I don't know the I have to the enter the password.

22 Q. Did it look like a computer?

23 A. It was a small one.

24 Q. Like a small computer?

25 A. I believe, yes, but it's been a long time. I don't

1 recall.

2 Q. And what would happen after you put the pass code
3 into the system?

4 A. After the pass word was entered, there would be a
5 piece of paper that came out.

6 Q. And then what do you do with the piece of paper?

7 A. I inserted it on the side.

8 Q. What do you insert it into?

9 A. It was inserted on the side of the time punch-in
10 machine for reading.

11 Q. Was it like a box or anything like that?

12 A. Approximately like a box, but I'm not sure, and we
13 had to insert the card -- the paper there to be punched.

14 Q. Did you take any breaks during the day?

15 A. No.

16 Q. You didn't take any breaks throughout the day?

17 A. I work hours that would be from 12 to 10:00 o'clock.

18 Q. Did you have lunch?

19 A. Yes, I would get lunch, but at 3 o'clock when we had
20 lunch, if there were orders, we still have to prepare
21 them.

22 Q. How long would you typically eat lunch for?

23 A. Approximately ten minutes.

24 Q. Were you ever told that you could break between 3 and
25 5:00 p.m.?

1 A. No.

2 Q. If there were no customers between 3 and 5:00 p.m.,
3 did you have to work?

4 A. From 12 to 10, if you finish your job and there were
5 no customers, you can take a rest.

6 Q. How often did you have rests like this?

7 A. For me it was rare.

8 Q. What about other employees, did you see them taking
9 breaks?

10 A. Anytime if there were no customers, we had to stand
11 by. It was not considered a break. We had to wait for
12 the orders.

13 Q. If you were on standby, could you rest? Could you
14 take what you wanted -- sorry. I will rephrase it.

15 During the time where you said you were on
16 standby, could you do whatever you wanted to do inside the
17 restaurant

18 A. During what hours? It is impossible to do anything
19 else, just wait for the customers.

20 Q. Did you stand around in the kitchen?

21 A. Yes.

22 Q. Did you ever see employees napping at the restaurant?

23 A. No, no, I did not see them.

24 Q. Did you typically leave before 10:00 p.m.?

25 A. I never left at 4:00.

1 Q. I'm sorry, the question was: Did you ever leave
2 before 10:00 p.m.?

3 THE INTERPRETER: Before 10:00 p.m.?

4 MR. BROWN: Yes.

5 A. No, no.

6 Q. You said earlier that you didn't punch in and out
7 during the day twice. But if you turn to page D-00741 --

8 THE COURT: Of what exhibit?

9 MR. BROWN: On exhibit D-four.

10 THE COURT: What time?

11 MR. BROWN: 7:41.

12 BY MY. BROWN:

13 Q. If you look down to the third slip on the right for
14 January 30, 2015, it says clocked in at 12:49 p.m. and
15 clocked out at 4:36 p.m.

16 Why would you clock out at 4:36 p.m.?

17 A. I don't recall this date.

18 Q. Would you ever punch the clock in the middle of the
19 afternoon like this?

20 A. At the time I left and I punched the card at night,
21 and I did not punch the card in the afternoon like this.

22 Q. So, how would you explain this punch clock record
23 which shows a punch out at 4:36 p.m.?

24 A. There was only one person in the kitchen, if the
25 person left the restaurant after close.

1 Q. You are saying sometimes the restaurant would close
2 in the middle of the afternoon?

3 A. What I mean is that if I punch out at this hour, the
4 restaurant had to be closed.

5 Q. If you turn to the next page - this is D-00742 - and
6 you look at the the bottom left, it says that you punched
7 in at 5:46 p.m.

8 Do you know why you would punch in at that time?

9 A. I already said that because there was only one person
10 in the kitchen, and when I arrive at the restaurant
11 customers were waiting, so I have to finish servicing,
12 then I forgot to punch the card until I recalled, and I
13 punched the card at that time.

14 Q. So you arrived at the restaurant at 12, but you
15 remembered to punch in at 5:45 p.m.?

16 A. Yes, when I remember, it was after 5:00.

17 Q. Did you punch in after your break on this day?

18 THE INTERPRETER: On this day?

19 MR. BROWN: Yes.

20 A. Did not have a break.

21 THE COURT: Mr. Brown, how much more do you
22 have?

23 MR. BROWN: Not too much longer, maybe ten
24 minutes, that's all, a long ten minutes, maybe, but ten
25 minutes.

1 THE COURT: Okay.

2 BY MR. BROWN:

3 Q. On this same slip it says that you punched out at
4 9:06 p.m., February 3rd?

5 A. It was impossible for us to leave at 9 o'clock. So
6 sometimes when we finished all the job and waiting to
7 leave, then I would punch the card first in advance.

8 Q. So this was punched in the clock after you were done
9 with your work in the kitchen, correct?

10 A. Yes.

11 Q. And when you waiting for your ride home?

12 A. I was not waiting for the vehicle to go home. If
13 there are customers, I still have to work.

14 Q. But you just said you were done with your work in the
15 kitchen?

16 A. After the job in the kitchen was finished and the
17 card was punched, very often when we are waiting in the
18 kitchen, customers would come up and we still have to
19 work.

20 Q. So why would you -- just before that you said you
21 punched when you were done with your job in the kitchen?

22 A. The opposing attorney, I have a question to ask you.

23 On this same page, the top, I punched in at 8:19
24 and punched out at 8:19, and you mean the owner would pay
25 me free to this date?

1 THE COURT: Mr. Li, your job is to just answer
2 the questions today. There's no other information to
3 bring out. Your attorney is free to do it, but please
4 answer the question.

5 THE DEFENDANT: I know.

6 THE COURT: If you don't understand the question
7 or unable to answer a question, then you can say that, but
8 you can't ask a question.

9 THE DEFENDANT: I know.

10 MR. BROWN: What was the question?

11 THE COURT: Why don't you rephrase the question.
12 Just pick up where you left off.

13 MR. BROWN: Can you just remind me what the
14 question was?

15 (The last question is read back.)

16 A. What I mean is that for the restaurant job, I
17 finished the job in the kitchen, just in case I forgot, so
18 I punched the clock twice. But based on what hours I have
19 to stay at the restaurant, if any other customers would
20 come in, I still have to work, but there was no such thing
21 that the job was finished.

22 Q. What you have before you is a document marked
23 D-00260. This is part of Exhibit D-7.

24 A. Yes.

25 Q. Do you recognize this photo?

1 A. Yes.

2 Q. And, in your words, can you describe what is in this
3 photo?

4 A. This is the big bucket that holds rice.

5 Q. Do you recognize this as a picture of the kitchen at
6 the Showa Hibachi?

7 A. Yes.

8 Q. And in this photo there appears to be some paper
9 posted on the walls on the right side.

10 Do you see that?

11 A. At the time I did not see them.

12 Q. Okay.

13 But do you recognize this as an area inside the
14 kitchen?

15 A. Yes.

16 MR. BROWN: Your Honor, I ask to request that
17 Exhibit D-7 be admitted into evidence.

18 THE COURT: Mr. Troy?

19 MR. TROY: No objection.

20 THE COURT: Admitted, D-7.

21 (Whereupon, Defendant's Exhibit D-7 is received
22 and marked into evidence.)

23 BY MR. BROWN:

24 Q. Where in the kitchen is this? What area of the
25 kitchen is this picture depicted in?

1 A. It was the right side, after you entered into the
2 kitchen.

3 Q. And was this an area that was clearly visible to
4 workers in the kitchen?

5 A. Yes.

6 Q. Do you recall ever seeing any kind of messages posted
7 on the walls in this area?

8 A. From my recollection, no.

9 Q. Did ever complain to any of the owners at Showa
10 Hibachi about your pay or your hours of work?

11 A. No, I did not complain about my wages.

12 Q. And why not?

13 A. I thought that if I was willing to do the job, I
14 would take it, otherwise I would not do it. I never
15 complained about my wages to the boss.

16 Q. Do you think you were paid fairly for the work that
17 you did?

18 A. It was unfair.

19 Q. So then why didn't you complain at the time?

20 A. I said that on weekends they were supposed to hire a
21 person to wash the dishes, but later on they did not hire
22 such a person. I had to do washing of the dishes. So
23 Friday was very busy.

24 Q. Is your primary complaint -- your primary grievance
25 against the restaurant that you had to clean when that was

1 not part of the job?

2 A. Could you repeat that.

3 Q. I will rephrase it.

4 Was your primary grievance against the
5 restaurant that they had you doing work, such as cleaning,
6 that you believe that was not part of your job
7 description?

8 A. Yes.

9 Q. You said during your direct testimony that you
10 reviewed the receipts in the kitchen. Was that correct?

11 A. Yes.

12 Q. Are receipts -- where are the receipts located in the
13 kitchen?

14 A. The receipts were clipped above the area where we
15 prepare the ingredients at the area.

16 Q. And what information are on the receipts?

17 A. It says the name of the dish and the quantity. If
18 there was a table, it gave the table number.

19 Q. Anything else on the slip?

20 A. If the it for take out orders, it would indicate it
21 was a takeout order.

22 Q. So, based on that information, how would you
23 determine what the restaurant's monthly sales were?

24 A. Based on many years of experience, I know how much
25 basically for the main course at the restaurant and how

1 much for the appetizer, and the amount generally would not
2 be over 5 to 10 percent in variation. So the accuracy was
3 more than 90 percent.

4 MR. BROWN: I have no further questions.

5 THE COURT: Okay. Let's take a five-minute
6 break. You will have redirect, Mr. Troy.

7 (A recess is taken at this time.)

8 (Trial was settled so did not resume.)

9 (Proceedings Concluded.)

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I-N-D-E-X

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W-I-T-N-E-S-S-E-S

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14 DECHENG LI 107

15 CROSS-EXAMINATION 108

16 BY MR. BROWN

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19 Defendant's Exhibit D-7 is received and 128
20 marked into evidence

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23 Defense Exhibit D4 in evidence 117

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